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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

SONY CORPORATION, A Japanese  
Corporation,

Plaintiff,

vs.

VIZIO, Inc.,

Defendant.

Case No. CV 08-01135-RGK (FMOx)

**[PROPOSED] PROTECTIVE ORDER**

**[DISCOVERY MATTER]**

**Judge: Hon. Fernando M. Olguin**

**Trial Date: January 26, 2010**

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**PROTECTIVE ORDER**

To expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial in the above-captioned case and in the case (CV 09-02129-RGK (FMOx)) consolidated herewith, as referenced in this Court's order of May 11, 2009, pursuant to Fed. R. Civ. P. 26(c), it is hereby

**ORDERED THAT:**

**I. Definitions**

1. "Party": any party to this action or a subsidiary thereof, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).
2. "Material": all information, documents, testimony, and things produced, served or otherwise provided in this action by the Parties or by non-parties.
3. "Designating Party": a Party or non-party that designates information, documents, or things for production in disclosures, or in responses to discovery as "CONFIDENTIAL", "OUTSIDE

1 ATTORNEYS' EYES ONLY", "OUTSIDE ATTORNEYS' EYES  
2 ONLY – SOURCE CODE."

3 4. "CONFIDENTIAL" Material: information, documents, and things  
4 the Designating Party has good cause to believe is not generally  
5 known to others, and which the Designating Party (i) would not  
6 normally reveal to third parties except in confidence, or has  
7 undertaken with others to maintain in confidence, or (ii) has good  
8 cause to believe is protected by a right to privacy under federal or  
9 state law, or any other applicable privilege or right related to  
10 confidentiality or privacy.  
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14 5. "OUTSIDE ATTORNEYS' EYES ONLY" Material: information,  
15 documents, and things the Designating Party has good cause to  
16 believe is not generally known to others, and has significant  
17 competitive value such that unrestricted disclosure to others,  
18 including the Receiving Party's in-house counsel, would create a  
19 substantial risk of serious injury, and which the Designating Party (i)  
20 has good cause to not normally reveal to third parties except in  
21 confidence, or has undertaken with others to maintain in confidence,  
22 or (ii) has good cause to believe is significantly sensitive and  
23 protected by a right to privacy under federal or state law or any other  
24 applicable privilege or right related to confidentiality or privacy.  
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1 6. “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”:

2 RTL, HDL, microcode, or other sensitive code or schematics  
3 (collectively, “SOURCE CODE”) that the Designating Party has  
4 good cause to believe is not generally known to others, and has  
5 significant competitive value such that unrestricted disclosure to  
6 others would create a substantial risk of serious injury, and which the  
7 Designating Party (i) has good cause to not normally reveal to third  
8 parties except in confidence, or has undertaken with others to  
9 maintain in confidence, or (ii) has good cause to believe is  
10 significantly sensitive and protected by a right to privacy under  
11 federal or state law, or any other applicable privilege or right related  
12 to confidentiality or privacy.  
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14 7. “Producing Party”: a Party or non-party that produces Material in this  
15 action.  
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17 8. “Receiving Party”: a Party that receives Material from a Producing  
18 Party.  
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20 9. “Designated Material”: Material that is designated  
21 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”, or  
22 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” under  
23 this Order.  
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1 10. "Counsel of Record": (i) outside counsel who appears on the  
2 pleadings as counsel for a Party, (ii) partners, principals, associates,  
3 and employees of such outside counsel to whom it is reasonably  
4 necessary to disclose the information for this litigation, including  
5 supporting personnel employed by the attorneys, such as paralegals,  
6 legal translators, legal secretaries, legal clerks and shorthand  
7 reporters, and/or (iii) independent legal translators retained to  
8 translate in connection with this action, or independent shorthand  
9 reporters retained to record and transcribe testimony in connection  
10 with this action.  
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14 11. "Outside Consultant": a person with specialized knowledge or  
15 experience in a matter pertinent to the litigation who has been  
16 retained by Counsel of Record to serve as an expert witness, or as a  
17 consultant in this action, and who is not a current employee of a Party  
18 or of a competitor of a Party and who, at the time of retention, is not  
19 anticipated to become an employee of a Party or of a competitor of a  
20 Party.  
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23 12. "Professional Vendors": persons or entities that provide litigation  
24 support services (e.g., photocopying; videotaping; translating;  
25 designing and preparing exhibits, graphics, or demonstrations;  
26 organizing, storing, retrieving data in any form or medium; etc.) and  
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1 their employees and subcontractors who have been retained by  
2 Counsel of Record in this action, and who are not current employees  
3 of a Party or of a competitor of a Party and who, at the time of  
4 retention, are not anticipated to become employees of a Party or of a  
5 competitor of a Party. This definition includes professional jury or  
6 trial consultants retained in connection with this litigation, and mock  
7 jurors retained by such a consultants to assist them in their work.  
8 Professional vendors do not include consultants who fall within the  
9 definition of Outside Consultant.  
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## 12 **II. Good Cause Statement**

13 13. A Producing Party shall not designate Material as  
14 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”, or  
15 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”,  
16 unless good cause exists. Good cause shall exist when public  
17 knowledge of a trade secret or other confidential research,  
18 development, or commercial information would result in specific  
19 prejudice or harm to the Producing Party, such as the public  
20 disclosure of proprietary information, failure to maintain status as a  
21 trade secret, detriment to intellectual property, or other harm to the  
22 Producing Party’s competitive standing in the marketplace.  
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1 14. Items for which good cause shall exist include, but are not limited to,  
2 i) proprietary technical documents such as blueprints, schematics,  
3 SOURCE CODE or other technical materials; ii) customer lists and  
4 other customer data which have economic value to the producing  
5 party and are not public; iii) industry data or analysis which has  
6 economic value to the producing party and is not public; iv) contracts,  
7 licenses, agreements and documents or information related to such  
8 that are normally kept confidential during the ordinary course of  
9 business; v) financial and sales information and related documents,  
10 such as cost, pricing, margin, and other financial data; vi) corporate  
11 planning, strategy and/or budget information or documents; vii) non-  
12 public or draft patent applications; viii) invention disclosures; ix)  
13 internal communications; and x) information or documents  
14 originating with a third party and which the Producing Party bears an  
15 obligation, either explicit or implicit, to not disclose publicly. Good  
16 cause shall also exist for Materials, including Materials generated  
17 during the pendency of this litigation (or prior to this litigation but  
18 related to it), which are based on and/or contain information derived  
19 from such information.  
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26 15. Good cause shall not exist for any document or information which  
27 is generally known to or accessible by members of the public. For  
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1 example, good cause shall not exist for a) any information that at the  
2 time of disclosure to a Receiving Party is in the public domain, b)  
3 any information that after disclosure to the Receiving Party becomes  
4 part of the public domain as a result of publication not involving a  
5 violation of this Protective Order; c) any information that a Receiving  
6 Party can show was received by it, whether before or after the  
7 disclosure, from a source who obtained the information lawfully and  
8 under no obligation or confidentiality to the Producing Party, and/or  
9 d) any information that a Receiving Party can show was  
10 independently developed by it after the time of disclosure by  
11 personnel who have not had access to the Producing Party's  
12 Materials. Such information may include, but is not limited to, any  
13 publicly available patent application materials or related filings;  
14 publicly filed financial disclosures; information available on the  
15 Internet without use of a password or other security protection;  
16 information previously included in press releases or other marketing  
17 activities; information and documents normally distributed to the  
18 public, or publicly filed court documents. Good cause shall not exist  
19 for other items not listed here that share the same general  
20 characteristics as the items listed in this paragraph. Nor shall good  
21 cause exist for any information or document the public disclosure of  
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1 which would not result in specific prejudice or harm to the Producing  
2 Party.

3 **III. Scope**  
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5 16. The protections conferred by this Order are limited to those within  
6 the scope of the Federal Rules of Civil Procedure and the Local Rules  
7 of the United States District Court for the Central District of  
8 California (“Local Rules”). Unless otherwise ordered by the Court,  
9 the dispute resolution procedures described below shall be carried out  
10 pursuant to Local Rule 37.  
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13 17. The protections conferred by this Order cover not only Designated  
14 Material (as defined above), but also any information copied or  
15 extracted therefrom, as well as all copies, excerpts, summaries, or  
16 compilations thereof. Nothing herein shall alter or change in any  
17 way the discovery provisions of the Federal Rules of Civil Procedure,  
18 or the Court’s deadlines provided in the Scheduling Order or any  
19 other Order. Identification of any individual pursuant to this  
20 Protective Order does not make that individual available for  
21 deposition, or any other form of discovery outside of the restrictions  
22 and procedures of the Federal Rules of Civil Procedure, the Local  
23 Rules of the United States District Court for the Central District of  
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1 California, and the Court's deadlines provided in the Scheduling  
2 Order.

3 **IV. Access to Designated Material**  
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5 18. **CONFIDENTIAL Material:** Unless otherwise ordered by the  
6 Court or permitted in writing by the Designating Party, a Receiving  
7 Party may disclose any information, document or thing designated  
8 "CONFIDENTIAL" only to the following, in addition to those  
9 identified in Paragraphs 33 and 34 below regarding use of Designated  
10 Material at depositions:  
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13 a) Persons who appear on the face of Designated Material as an  
14 author, addressee or recipient thereof;

15 b) Counsel of Record;

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17 c) Up to four (4) employees of a Receiving Party and necessary  
18 secretarial staff who are responsible for providing oversight of or assistance in the  
19 litigation, and who have signed the "Acknowledgement and Agreement To Be  
20 Bound By Protective Order" attached hereto as Exhibit A;

21  
22 d) Up to two (2) in-house attorneys (including in-house foreign  
23 patent attorneys) of the Receiving Party, and necessary secretarial staff, having  
24 responsibility for providing oversight of or assistance in the litigation, provided that  
25 each such attorney must keep all such documents and information in segregated files  
26 access to which is restricted to the designated attorney and necessary secretarial  
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1 staff, and who have signed the “Acknowledgement and Agreement To Be Bound By  
2 Protective Order” attached hereto as Exhibit A;

3 e) With respect to Designated Material from third parties, absent a  
4 protective order or agreement of the third party, Designated Material from third  
5 parties may not be disclosed to employees of a Receiving Party, including in-house  
6 attorneys;  
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8 f) Outside Consultants of the Receiving Party to whom disclosure  
9 is reasonably necessary for this litigation, and who have signed the  
10 “Acknowledgement and Agreement To Be Bound By Protective Order” attached  
11 hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as  
12 Exhibit B;  
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14 g) The Court and its personnel;

15 h) Any designated arbitrator or mediator who is assigned to hear  
16 this matter, or who has been selected by the Parties, and his or her staff, who have  
17 signed the “Acknowledgement and Agreement To Be Bound By Protective Order”  
18 attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto  
19 as Exhibit B;  
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21 i) Court reporters and videographers employed in connection with  
22 this case; and  
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24 j) Professional Vendors to whom disclosure is reasonably  
25 necessary for this litigation, and a representative of which has signed the  
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1 “Acknowledgement and Agreement To Be Bound By Protective Order” attached  
2 hereto as Exhibit A.

3 19. **“OUTSIDE ATTORNEYS’ EYES ONLY” and “OUTSIDE**  
4 **ATTORNEYS’ EYES ONLY – SOURCE CODE” Material:**

5 Unless otherwise ordered by the Court or permitted in writing by the  
6 Designating Party, a Receiving Party may disclose any information,  
7 documents or things designated “OUTSIDE ATTORNEYS’ EYES  
8 ONLY” and **“OUTSIDE ATTORNEYS’ EYES ONLY –**  
9 **SOURCE CODE”** only to the following, in addition to those  
10 identified in Paragraphs 33 and 34 below regarding use of Designated  
11 Material at depositions:  
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13 a) Persons who appear on the face of Designated Material as an  
14 author, addressee or recipient thereof;  
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16 b) Counsel of Record;  
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18 c) With respect to Designated Material from third parties, absent a  
19 protective order or agreement of the third party, Designated Material from third  
20 parties may not be disclosed to employees of a Receiving Party, including in-house  
21 attorneys.  
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23 d) Outside Consultants of the Receiving Party to whom disclosure  
24 is reasonably necessary for this litigation, and who have signed the  
25 “Acknowledgement and Agreement To Be Bound By Protective Order” attached  
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1 hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as  
2 Exhibit B;

3 e) The Court and its personnel;

4 f) Any designated arbitrator or mediator who is assigned to hear  
5 this matter, or who has been selected by the Parties, and his or her staffs, who have  
6 signed the “Acknowledgement and Agreement To Be Bound By Protective Order”  
7 attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto  
8 as Exhibit B;  
9

10 g) Court reporters and videographers employed in connection with  
11 this case; and  
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13 h) Professional Vendors to whom disclosure is reasonably  
14 necessary for this litigation, and a representative of which has signed the  
15 “Acknowledgement and Agreement To Be Bound By Protective Order” attached  
16 hereto as Exhibit A.  
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19 20. Each person to whom Designated Material may be disclosed, and  
20 who is required to sign the “Acknowledgement and Agreement To  
21 Be Bound By Protective Order” attached hereto as Exhibit A and, if  
22 applicable, the “Certification Of Consultant” attached hereto as  
23 Exhibit B, shall do so, prior to the time such Designated Material is  
24 disclosed to him or her. Counsel for a Party who makes any  
25 disclosure of Designated Material shall retain each original executed  
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1 certificate and, upon written request, shall provide copies to counsel  
2 to all other Parties at the termination of this action.

3 21. At the request of the Designating Party, persons not permitted  
4 access to Designated Material under the terms of this Protective  
5 Order shall not be present at depositions while the Designating  
6 Party's Designated Material is discussed or otherwise disclosed. Any  
7 Party intending to disclose or discuss Designated Material at pretrial  
8 or trial proceedings must give advance notice to assure the  
9 implementation of the terms of this Protective Order.  
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13 **V. Access By Outside Consultants**

14 22. **Notice.** If a Receiving Party wishes to disclose another Party's  
15 Designated Material to any Outside Consultant, such Receiving Party  
16 must provide notice to counsel for the Designating Party, which  
17 notice shall include: (a) the individual's name and business title; (b)  
18 business address; (c) business or profession; (d) the individual's CV;  
19 (e) any previous or current relationship (personal or professional)  
20 with any of the parties; (f) a list of other cases in which the individual  
21 has testified (at trial or deposition) within the last four years; (g) a list  
22 of all companies with which the individual has consulted or by which  
23 the individual has been employed within the last four years; and (h) a  
24 signed copy of the "Acknowledgement and Agreement To Be Bound  
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1 By Protective Order” attached as Exhibit A, and the “Certification Of  
2 Consultant” attached hereto as Exhibit B. No Party will seek  
3 discovery from a non-testifying Outside Consultant disclosed under  
4 this Order simply because they have been disclosed under this Order  
5 without an Order of this Court based on a finding of good cause.  
6

7 **23. Objections.** The Designating Party shall have five (5) business  
8 days from receipt of the notice specified in Paragraph 22 to object in  
9 writing to such disclosure (plus three (3) extra days if notice is given  
10 other than by hand delivery, e-mail transmission or facsimile  
11 transmission). Any such objection must set forth in detail the grounds  
12 on which it is based. After the expiration of the 5-day (plus 3-days, if  
13 appropriate) period, if no objection has been asserted, then  
14 Designated Material may be disclosed to the Outside Consultant  
15 pursuant to the terms of this Order. However, if the Designating  
16 Party objects within the 5-day (plus 3-days, if appropriate) period, the  
17 Receiving Party may not disclose Designated Material to the  
18 challenged individual absent resolution of the dispute pursuant to  
19 Local Rule 37 or Court Order. In the event the Designating Party  
20 makes a timely objection, the parties shall promptly meet and confer  
21 pursuant to Local Rule 37 to try to resolve the matter by agreement.  
22 If the parties cannot reach an agreement, pursuant to Local Rule 37  
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1 the Objecting Party may, within three (3) business days following the  
2 meet and confer, file a motion for a protective order preventing  
3 disclosure of Designated Material to the Outside Consultant, or for  
4 other appropriate relief. If the objecting party fails to file a motion for  
5 protective order within the prescribed period, any objection to the  
6 Outside Consultant is waived, and Designated Material may  
7 thereafter be disclosed to such individual (upon signing the  
8 “Acknowledgement and Agreement To Be Bound By Protective  
9 Order” attached hereto as Exhibit A). If the Objecting party files  
10 pursuant to Local Rule 37 a timely motion for a protective order,  
11 Designated Material shall not be disclosed to the challenged  
12 individual until and unless a final ruling allowing such disclosure is  
13 made by this Court, or by the consent of the Objecting party,  
14 whichever occurs first.  
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19 **VI. Production of ATTORNEYS’ EYES ONLY – SOURCE CODE Material**  
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21 24. If a Party is required to produce SOURCE CODE, it must do so in  
22 electronically searchable form and under the terms of Section VI.  
23 The Producing Party shall produce SOURCE CODE preferably on a  
24 hard drive, or alternatively on a stand-alone laptop computer. The  
25 stand-alone computer or hard drive shall contain appropriate software  
26 for accessing and reviewing the SOURCE CODE. All data on any  
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1 stand-alone computer or hard drive, including all SOURCE CODE,  
2 shall be protected by confidential passwords or codes and, at the  
3 option of the Producing Party, may be encrypted. In addition to the  
4 SOURCE CODE, a stand-alone computer or hard drive shall contain  
5 the software used to develop the SOURCE CODE, if that software is  
6 possessed by the Producing Party and is not subject to restrictions  
7 regarding its use that would preclude the Producing Party from  
8 providing copies. The Parties will work together to ensure any  
9 produced SOURCE CODE can be accessed by the Receiving Party in  
10 accordance with the terms of this Order.  
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14 25. If the Receiving Party wants to use other software to access or  
15 review the SOURCE CODE, it must notify the Producing Party of  
16 the specific software to be used before installing such software on the  
17 stand-alone computer or hard drive, or using such software to access  
18 or review the SOURCE CODE. By close of business on the next  
19 business day after receiving notice from Receiving Party, Producing  
20 Party will provide Receiving Party with the appropriate key or  
21 password to enable Receiving Party to install such software on the  
22 stand-alone computer or hard drive, or to use such software to access  
23 or review the SOURCE CODE. Unless otherwise agreed to in  
24 writing by the Producing Party, and such agreement shall not be  
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1 unreasonably withheld, the Receiving Party is not permitted to use  
2 any other software to access or review the SOURCE CODE, or  
3 install or run any other software on any stand-alone computer or hard  
4 drive. Any stand-alone computer or hard drive containing the  
5 SOURCE CODE shall be maintained by the Receiving Party's  
6 Counsel of Record under lock and key at its offices. While the  
7 SOURCE CODE is maintained on the stand-alone computer or hard  
8 drive, it will be handled in accordance with the "OUTSIDE  
9 ATTORNEYS' EYES ONLY – SOURCE CODE" designation.  
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13 26. No electronic copies of the SOURCE CODE will be permitted. If  
14 the Receiving Party wishes to make a paper copy of certain limited  
15 portions of the SOURCE CODE, such as routines or sub-routines,  
16 only one (1) paper copy of those limited portions will be allowed on  
17 watermarked paper. A log shall be maintained of any selected  
18 portions printed out to paper. The log will be provided to the  
19 Producing Party upon request. The Receiving Party will not be  
20 allowed to print any wholesale or unnecessarily large portions of the  
21 SOURCE CODE from the stand-alone computer or hard drive.  
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25 27. A Receiving Party may request a Producing Party to provide up to  
26 three (3) additional electronic copies of SOURCE CODE that may be  
27 kept at other offices of the Receiving Party's Counsel of Record  
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1 under the same restrictions described above. Any such electronic  
2 copies may be maintained only at the offices of the Receiving Party's  
3 Counsel of Record. The Receiving Party shall maintain a log  
4 indicating, at all times, the location of each stand-alone computer or  
5 hard drive containing SOURCE CODE.  
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7 28. Access to a stand-alone computer or hard drive must be controlled  
8 by the use of confidential passwords or codes. At the option of the  
9 Producing Party, data on any stand-alone computer or hard drive may  
10 be encrypted. A hard drive containing the SOURCE CODE may be  
11 connected only to a stand-alone computer. A stand-alone computer  
12 (as referenced in Section VI) shall not be connected to a network, the  
13 Internet or any peripheral device, except to a stand-alone printer or to  
14 a hard drive provided by the Producing Party. A stand-alone  
15 computer shall not have the ability to electronically transmit  
16 information therefrom, including, without limitation, via a Local  
17 Area Network or Internet connection, wireless connection, a modem,  
18 or any other port or device capable of electronic transmission. All  
19 input/output ports on a stand-alone computer shall be disabled,  
20 except for a printer port and any port necessary to attach a hard drive  
21 provided by the Producing Party. Access to a stand-alone computer  
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1 must be further controlled by the use of confidential passwords or  
2 codes in order to log onto the stand-alone computer.

3 29. The Producing Party will produce the relevant SOURCE CODE in  
4 its entirety (i.e., all code necessary for compilation), but need not  
5 produce it in executable format absent a specific request from the  
6 Receiving Party, which a Receiving Party will only make when  
7 necessary.  
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10 30. If the Receiving Party prints a paper copy of any SOURCE CODE  
11 designated as "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE  
12 CODE", such paper copy must always be kept under lock and key at  
13 the office of the Receiving Party's Outside Counsel of Record or  
14 other agreed upon location. Paper copies of SOURCE CODE  
15 designated as "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE  
16 CODE" shall include Bates number and confidentiality labels when  
17 printed.  
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## 21 **VII. Prosecution Bar**

22 31. Unless otherwise agreed to in writing by a Producing Party, any  
23 individual subject to this Protective Order who obtains, receives or  
24 otherwise learns, in whole or in part, technical Designated Material  
25 from a Producing Party relating to a party's products or processes,  
26 shall not prepare, prosecute or be involved in the preparation or  
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1 prosecution of any patent application related to the subject matter  
2 claimed in any of the patents-in-suit during the pendency of this  
3 litigation and for a period of two (2) years following the conclusion  
4 of this litigation (including, if applicable, any appeals therefrom).  
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## 6 **VIII. Use Of Designated Material**

7 **32. Use Of Designated Material By Receiving Party.** Unless  
8 otherwise ordered by the Court, or agreed to in writing by the Parties,  
9 all Designated Material, and all information derived therefrom, shall  
10 be used by the Receiving Party only for purposes of this litigation  
11 and for the litigation known as Vizio, Inc. v. Sony Corporation, Case  
12 No. CV 09-2129, and shall not be used in any other way, or for any  
13 other purpose. Information contained or reflected in Designated  
14 Materials shall not be disclosed in conversations, presentations by  
15 parties or counsel, in court or in other settings that might reveal  
16 Designated Material, except in accordance with the terms of this  
17 Order.  
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22 **33. Use Of Designated Material By Designating Party.** Nothing in  
23 this Order shall limit any Designating Party's use of its own  
24 documents and information, nor shall it prevent the Designating Party  
25 from disclosing its own confidential information, documents or  
26 things to any person. Such disclosure shall not affect any  
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1 designations made pursuant to the terms of this Order, so long as the  
2 disclosure is made in a manner that is reasonably calculated to  
3 maintain the confidentiality of the information.  
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5 **34. Use of Designated Material at Depositions.** Except as may be  
6 otherwise ordered by the Court, any person may be examined as a  
7 witness at depositions and trial, and may testify concerning all  
8 Designated Material of which such person has prior knowledge,  
9 without in any way limiting the generality of the following:  
10

11 a) A present director, officer, employee, designated Rule 30(6)(b)  
12 witness, and/or Outside Consultant of a Producing Party may be examined, and may  
13 testify concerning all Designated Material which has been produced by that party;  
14

15 b) A former director, officer, agent and/or employee of a Producing  
16 Party may be interviewed, examined and may testify concerning all Designated  
17 Material of which he or she has prior knowledge, including any Designated Material  
18 that refers to matters of which the witness has personal knowledge, which has been  
19 produced by that Party and which pertains to the period or periods of his or her  
20 employment; and  
21

22 c) Non-parties may be examined or testify concerning any  
23 document containing Designated Material of a Producing Party which appears on its  
24 face, or from other documents or testimony, to have been received from, or  
25 communicated to, the non-party as a result of any contact or relationship with the  
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1 Producing Party, or a representative of such Producing Party. Any person other than  
2 the witness, his or her attorney(s), and any person qualified to receive Designated  
3 Material under this Order, shall be excluded from the portion of the examination  
4 concerning such information, unless the Producing Party consents to persons other  
5 than qualified recipients being present at the examination. If the witness is  
6 represented by an attorney who is not qualified under this Order to receive such  
7 information, then prior to the examination, the attorney shall be requested to sign the  
8 "Acknowledgement and Agreement To Be Bound By Protective Order" attached as  
9 Exhibit A. In the event that such attorney declines to sign the "Acknowledgement  
10 and Agreement To Be Bound By Protective Order" prior to the examination, the  
11 parties, by their attorneys, shall jointly seek a protective order from the Court  
12 prohibiting such attorney from disclosing such Designated Material.  
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17 35. A witness who previously had access to a document designated  
18 "CONFIDENTIAL," "OUTSIDE ATTORNEYS' EYES ONLY," or  
19 "OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," but  
20 who is not under a present non-disclosure agreement with the  
21 Producing Party that covers that document, may be shown the  
22 document if the witness is advised on the record of the existence of  
23 the Protective Order and that the protective order requires the parties  
24 to keep confidential any questions, testimony or documents that are  
25 designated as "CONFIDENTIAL", "OUTSIDE ATTORNEYS'  
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1 EYES ONLY”, or “OUTSIDE ATTORNEYS’ EYES ONLY –  
2 SOURCE CODE”. The witnesses may not copy, take notes on or  
3 retain copies of any Designated Material used or reviewed at the  
4 deposition. The witness may not take out of the deposition room any  
5 exhibit that is marked “CONFIDENTIAL”, “OUTSIDE  
6 ATTORNEYS’ EYES ONLY”, or “OUTSIDE ATTORNEYS’  
7 EYES ONLY – SOURCE CODE”. The Producing Party of any  
8 Designated Material used at the deposition may also require that the  
9 transcript and exhibits not be copied by the witness or his counsel  
10 and that no notes may be made of the transcript or the exhibits. The  
11 restrictions in this paragraph apply only to a witness who is not  
12 subject to this Order.  
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17 **IX. Procedure for Designating Materials**

18 36. Subject to the limitations set forth in this Order, a Designating Party  
19 may: designate as “CONFIDENTIAL” information that the  
20 Designating Party has good cause to believe meets the definition set  
21 forth in Paragraph 4 above; designate as “OUTSIDE ATTORNEYS’  
22 EYES ONLY” information that it has good cause to believe meets  
23 the definition set forth in Paragraph 5 above; designate as  
24 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”  
25  
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1 information that it has good cause to believe meets the definition set  
2 forth in Paragraph 6 above.

3 37. Except as provided above in Section VI with respect to “OUTSIDE  
4 ATTORNEYS’ EYES ONLY – SOURCE CODE” Material, any  
5 material (including physical objects) made available for initial  
6 inspection by counsel for the Receiving Party prior to producing  
7 copies of selected items shall initially be considered, as a whole, to  
8 constitute “OUTSIDE ATTORNEYS’ EYES ONLY” information,  
9 and shall be subject to this Order. Thereafter, the Producing Party  
10 shall have ten (10) calendar days from the inspection to review and  
11 designate the appropriate documents as “CONFIDENTIAL,”  
12 “OUTSIDE ATTORNEYS’ EYES ONLY” prior to furnishing copies  
13 to the Receiving Party.

14 38. Except as otherwise provided in this Order or as otherwise  
15 stipulated or ordered, Material that qualifies for protection under this  
16 Order must be designated in accordance with this Section IX before  
17 the Material is disclosed or produced.

18 39. Designation in conformity with this Order requires:

19 a) For information in documentary form (apart from transcripts of  
20 depositions, or other pretrial or trial proceedings), the Producing Party shall affix the  
21 legend “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or  
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1 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” on each page that  
2 contains Designated Material;

3           b) For testimony given in deposition, or in other pretrial or trial  
4 proceedings, the Designating Party shall specify any portions of the testimony that it  
5 wishes to designate as “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES  
6 ONLY” or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.” In the  
7 case of depositions, the Designating Party may also designate any portion of a  
8 deposition transcript as “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES  
9 ONLY” or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE,” by  
10 informing the reporter, and opposing Parties, in writing within thirty (30) calendar  
11 days of completion of the deposition of the designations to be applied. All  
12 deposition transcripts not marked at least “CONFIDENTIAL” during the deposition  
13 will nonetheless be treated as “CONFIDENTIAL” until the thirty (30) day period  
14 has expired. Transcript pages containing Designated Material must be separately  
15 bound by the court reporter, who must affix to the top of each such page the legend  
16 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or “OUTSIDE  
17 ATTORNEYS’ EYES ONLY – SOURCE CODE”, as instructed by the Designating  
18 Party; and  
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25           c) For information produced in some form other than documentary,  
26 and for any other tangible items, the Producing Party shall affix in a prominent place  
27 on the exterior of the container or containers in which the information or thing is  
28

1 stored the legend “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”  
2 or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.”

3 **IX. No Waiver of Privilege**

4  
5 40. Inspection or production of documents (including physical objects)  
6 shall not constitute a waiver in any Federal or State proceeding of the  
7 attorney-client privilege, work product immunity, or any other  
8 applicable privilege or immunity. After the Producing Party becomes  
9 aware of any inadvertent or unintentional disclosure, the Producing  
10 Party may designate any such documents as within the attorney-client  
11 privilege, work product immunity or any other applicable privilege or  
12 immunity, and request in writing return of such documents to the  
13 Producing Party. The inadvertent or unintentional disclosure shall not  
14 operate as a waiver in a Federal of State proceeding whether or not  
15 the holder or the privilege or immunity took reasonable steps to  
16 prevent the disclosure or promptly took reasonable steps to rectify the  
17 error in accordance with Federal Rule of Evidence 502(b). Upon  
18 request by the Producing Party, the Receiving Party shall  
19 immediately retrieve and return all copies of such inadvertently  
20 produced document(s). Nothing herein shall prevent the Receiving  
21 Party from challenging the propriety of the attorney-client privilege,  
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1 work product immunity or other applicable privilege or immunity  
2 designation by submitting a written challenge to the Court.

3 **X. Inadvertent Failure To Designate**  
4

5 41. An inadvertent failure to designate qualified information,  
6 documents or things as “CONFIDENTIAL”, “OUTSIDE  
7 ATTORNEYS’ EYES ONLY”, or “OUTSIDE ATTORNEYS’  
8 EYES ONLY – SOURCE CODE,” does not, standing alone, waive  
9 the Designating Party’s right to secure protection under this Order for  
10 such material. Upon discovery of an inadvertent failure to designate,  
11 a Producing Party may notify the Receiving Party in writing that the  
12 material is to be designated as “CONFIDENTIAL”, “OUTSIDE  
13 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES  
14 ONLY – SOURCE CODE.” Upon receipt of such notice, the  
15 Receiving Party must make reasonable efforts to assure that the  
16 material is treated in accordance with the terms of this Order, subject  
17 to the right to challenge the propriety of such designation(s). The  
18 Producing Party shall provide substitute copies of documents bearing  
19 the confidentiality designation.  
20  
21  
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25 **XI. Filing Designated Material**  
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27 42. Any document filed with the Court that reveals any Designated  
28 Material shall be done in accordance with Local Rule 79-5.1 In the

1 event the court denies the request to file said Designated Material  
2 under seal, the parties shall continue to treat the Designated Material  
3 in all other respects as Designated Material governed under this  
4 Order. This provisions of this paragraph are limited to documents  
5 filed with the Court prior to this case proceeding to trial.  
6

## 7 **XII. Challenges to Confidentiality Designations**

8

9 43. The Parties will use reasonable care when designating documents,  
10 things, or information as “CONFIDENTIAL”, “OUTSIDE  
11 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES  
12 ONLY – SOURCE CODE.” Nothing in this Order shall prevent a  
13 Receiving Party from contending that any or all documents, things, or  
14 information designated as “CONFIDENTIAL” Material, “OUTSIDE  
15 ATTORNEYS’ EYES ONLY” Material or OUTSIDE  
16 ATTORNEYS’ EYES ONLY – SOURCE CODE Material have been  
17 improperly designated. A Receiving Party may, at any time, request  
18 that the Producing Party cancel or modify the confidentiality  
19 designation with respect to any document, thing, or information  
20 contained therein.  
21  
22  
23  
24

25 44. A Party shall not be obligated to challenge the propriety of a  
26 “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY” or  
27 “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”  
28

1 designation at the time made, and the failure to do so shall not  
2 preclude a subsequent challenge thereto. Such a challenge shall be  
3 written, shall be served on counsel for the Producing Party, and shall  
4 identify particularly the document, thing, or information that the  
5 Receiving Party contends should be differently designated. If such  
6 negotiation fails to resolve the dispute within five (5) days of receipt  
7 of the written notice, the procedure for obtaining a decision from the  
8 Court is that set forth in Local Rule 37. If the parties wish to file a  
9 Joint Stipulation, required by Local Rule 37, under seal, the parties  
10 may file a stipulation to that effect or the moving party may file an ex  
11 parte application making the appropriate request. The parties must set  
12 forth good cause in the stipulation or ex parte application as to why  
13 the Joint Stipulation or portions thereof should be filed under seal.  
14 The document, thing, or information shall remain as designated until  
15 the Court has ruled upon the motion or the parties have agreed  
16 otherwise. Any order requiring disclosure shall be drawn as  
17 narrowly as possible to protect the interests of all parties concerned.

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23 **XIII. Protected Material Subpoenaed or Ordered Produced In Other**  
24 **Litigation**

25  
26 45. If a Receiving Party is served with a subpoena or a court order that  
27 would compel disclosure of any information, documents or things  
28

1 designated in this action as “CONFIDENTIAL”, “OUTSIDE  
2 ATTORNEYS’ EYES ONLY” or “OUTSIDE ATTORNEYS’ EYES  
3 ONLY – SOURCE CODE”, the Receiving Party must so notify the  
4 Designating Party, in writing (by fax and email) promptly, and in no  
5 event more than ten (10) calendar days after receiving the subpoena  
6 or order. Such notification must include a copy of the subpoena or  
7 order. The Receiving Party also must immediately inform, in  
8 writing, the party who caused the subpoena or order to issue that  
9 some or all of the material covered by the subpoena or order is  
10 subject to this Protective Order. In addition, the Receiving Party  
11 must deliver a copy of this Protective Order promptly to the party in  
12 the other action that caused the subpoena or order to issue. The  
13 purpose of imposing these duties is to alert the interested parties to  
14 the existence of this Protective Order and to afford the Designating  
15 Party in this case an opportunity to try to protect its confidentiality  
16 interests in the court from which the subpoena or order issued. The  
17 Designating Party shall bear the burdens and the expenses of seeking  
18 protection in that court of its Designated Material. Nothing in these  
19 provisions should be construed as authorizing or encouraging a  
20 Receiving Party in this action to disobey a lawful directive from  
21 another court.  
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1 **XIV. Unauthorized Disclosure Of Designated Material**

2 46. If a Receiving Party learns that, by inadvertence or otherwise, it has  
3 disclosed Designated Material to any person or in any circumstance  
4 not authorized under this Order, the Receiving Party must  
5 immediately (a) notify in writing the Designating Party of the  
6 unauthorized disclosures, (b) use its best efforts to retrieve all copies  
7 of the Designated Material, (b) inform the person or persons to whom  
8 unauthorized disclosures were made of all the terms of this Order,  
9 and (c) request such person or persons to execute the  
10 “Acknowledgment and Agreement to Be Bound” that is attached  
11 hereto as Exhibit A.  
12

13  
14  
15 **XV. Non-Party Use of this Protective Order**

16  
17 47. A non-party that produces Material voluntarily, or pursuant to a  
18 subpoena or a court order, may designate such Material in the same  
19 manner, and shall receive the same level of protection under this  
20 Protective Order, as any Party to this lawsuit.  
21

22 48. A non-party’s use of this Protective Order to protect its  
23 “CONFIDENTIAL” Material, “OUTSIDE ATTORNEYS’ EYES  
24 ONLY” Material or “OUTSIDE ATTORNEYS’ EYES ONLY –  
25 SOURCE CODE” Material does not entitle that non-party access to  
26 “CONFIDENTIAL” Material, “OUTSIDE ATTORNEYS’ EYES  
27  
28



1 ONLY” Material or “ATTORNEYS’ EYES ONLY – SOURCE  
2 CODE” Material produced by any Party in this case.

3 **XVI. Communications between Party and Counsel of Record**  
4

5 49. Privileged or protected communications or materials transmitted  
6 between a Party and its Counsel of Record need not be recorded on  
7 the Party’s privilege log or produced in this Case except upon a  
8 showing of good cause by a Party, and upon an Order of this Court.  
9

10 **XVII. Duration**  
11

12 50. With the exception described in Paragraph 51, even after the  
13 termination of this action, the confidentiality obligations imposed by  
14 this Order shall remain in effect until a Designating Party agrees  
15 otherwise in writing or a court order otherwise directs.  
16

17 51. This Protective Order shall not apply to the introduction of evidence  
18 at trial. Designated Materials not introduced as evidence at trial shall  
19 maintain such protections and designations after commencement of  
20 any trial in this matter. With respect to designated Materials  
21 introduced as evidence at trial, either party may seek appropriate  
22 court orders concerning the handling at trial of such materials.  
23  
24

25 **XVIII. Final Disposition**  
26

27 52. Unless otherwise ordered or agreed in writing by the Producing  
28 Party, within sixty (60) calendar days after the final termination of

1 this action, each Receiving Party must destroy or return all  
2 Designated Material to the Producing Party. As used in this  
3 Paragraph, “all Designated Material” includes all copies, abstracts,  
4 compilations, summaries or any other form of reproducing or  
5 capturing any of the Designated Material. The Receiving Party must  
6 submit a written confirmation of the return or destruction to the  
7 Producing Party (and, if not the same person or entity, to the  
8 Designating Party) by the 60-day deadline. Notwithstanding this  
9 provision, Counsel of Record may retain an archival copy of all  
10 pleadings, motion papers, deposition transcripts (including exhibits),  
11 transcripts of other proceedings (including exhibits), expert reports  
12 (including exhibits), discovery requests and responses (including  
13 exhibits), exhibits offered or introduced into evidence at trial, legal  
14 memoranda, correspondence or attorney work product, even if such  
15 materials contain Designated Material. Any such archival copies that  
16 contain or constitute Designated Material remain subject to this  
17 Protective Order as set forth in Section XVII (Duration), above.

## 18 **XIX. Miscellaneous**

19 53. The Parties agree that draft reports, draft declarations, draft  
20 affidavits, or notes taken by experts or prepared by Outside  
21 Consultants will not be subject to discovery. The Parties also agree

1 that all communications (including e-mail communications) between  
2 the Parties' Outside Consultants and in-house counsel or Counsel of  
3 Record as well as documents relating to such communications,  
4 except for documents, information, and things included in or attached  
5 to such communications that are directly relied upon by the testifying  
6 Outside Consultant in his or her expert report, will not be subject to  
7 discovery. Only the final expert report served on an opposing Party  
8 and the materials the Outside Consultant relied upon during  
9 preparation of the report are discoverable. The Parties will identify  
10 and produce copies of any documents "considered by the witness in  
11 forming the opinion" as required by Fed. R. Civ. P. 26(a)(2)(B).  
12  
13  
14

15 54. Any of the notice requirements herein may be waived, in whole or  
16 in part, but only by a writing signed by the Counsel of Record for the  
17 Party against whom such waiver will be effective.  
18

19 55. This Order is entered without prejudice to the right of any Party to  
20 apply to the Court at any time for modification of this Order, when  
21 convenience or necessity requires. Nothing in this Order abridges the  
22 right of any person to seek to assert other objections. No Party  
23 waives any right it otherwise would have to object to disclosing or  
24 producing any information, documents, or things on any ground not  
25 addressed in this Protective Order. Similarly, no Party waives any  
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28

1 right to object on any ground to the use in evidence of any of the  
2 material covered by this Protective Order. The Court shall take  
3 appropriate measures to protect Designated Material at trial and any  
4 hearing in this case.  
5

6 56. This Order shall not diminish any existing obligation or right with  
7 respect to Designated Material, nor shall it prevent a disclosure to  
8 which the Designating Party consents in writing before the disclosure  
9 takes place.  
10

11 57. The United States District Court for the Central District of  
12 California is responsible for the interpretation and enforcement of  
13 this Protective Order. All disputes concerning Designated Material  
14 under the protection of this Protective Order shall be resolved by the  
15 United States District Court for the Central District of California.  
16 This Court retains jurisdiction even after the termination of this  
17 action to enforce this Protective Order and to amend this Protective  
18 Order as the Court deems appropriate.  
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23 Date: May \_\_, 2009

24 Hon. Fernando M. Olguin  
United States Magistrate Judge  
25  
26  
27  
28

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**  
**BY PROTECTIVE ORDER**

I, \_\_\_\_\_ [print or type full name], state:

1. I reside at

\_\_\_\_\_;

2. My present employer is

\_\_\_\_\_;

3. My present occupation or job description is

\_\_\_\_\_;

4. I agree to keep confidential all information provided to me in the matter of Sony Corporation v. Vizio, Inc., Case No. CV 08-01135-RGK (FMOx) in the United States District Court for the Central District of California (and the case, CV 09-02129-RGK (FMOx), consolidated therewith), and to be subject to the authority of that Court in the event of any violation or dispute related to this agreement.

5. I have been informed of and have reviewed the Protective Order entered in this case, and I will not divulge any information, documents or things that are subject to the Protective Order except in accordance with the provisions of the Order;

6. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
[printed name]

\_\_\_\_\_  
[signature]

## EXHIBIT B

### CERTIFICATION OF CONSULTANT

I, \_\_\_\_\_ [print or type full  
name], \_\_\_\_\_ of

\_\_\_\_\_ am not an employee of the Party who retained me, or of a competitor of the  
opposing Party. If at any time after I execute this Certificate of Consultant and  
during the pendency of the Action I become an employee of a competitor of the  
opposing Party, I will promptly inform the counsel for the party who retained me in  
the Action, and I will not thereafter review any Designated Materials marked by the  
opposing Party as “CONFIDENTIAL”, “OUTSIDE ATTORNEYS’ EYES ONLY”  
or “OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” unless and until  
the Parties agree or the Court orders otherwise.

I state under penalty of perjury under the laws of the United States of  
America that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
[printed name]

\_\_\_\_\_  
[signature]